

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

DAVID BRADFORD POSTELLE,)	
)	
Petitioner,)	
)	
vs.)	Case No. CIV-11-425-R
)	
ROBERT EZELL, Warden,)	
)	
Respondent.)	

REPORT AND RECOMMENDATION

Petitioner, a state prisoner appearing pro se, brings this action pursuant to 28 U.S.C. § 2254, seeking habeas relief from his state court convictions. United States District Judge David L. Russell referred this matter to the undersigned Magistrate Judge for initial proceedings consistent with 28 U.S.C. § 636(b)(1)(B). Petitioner has filed a motion for summary judgment based on his claim that Respondent failed to comply with the Court's order calling for a response to the Petition. He requests the Court to grant his petition for a federal writ of habeas corpus, and remand his case to state court for a new trial. He also asks for various other relief, such as the imposition of sanctions on Respondent, or consideration of the merits of his petition without regard to any answer filed by Respondent.

A review of the Court's docket for this action reveals that on April 20, 2011, the Court ordered Respondent to file an answer to the allegations in the Petition within 20 days. [Doc. No. 6]. Contrary to Petitioner's assertion, Respondent did comply with that order and, in fact, filed a response before the stated deadline. [Doc. No. 8]. In light of these facts, there is no merit to Petitioner's claim that Respondent failed to comply with the Court's order and

it is therefore recommended that Petitioner's Motion for Summary Judgment be denied.

RECOMMENDATION

Based on the foregoing findings, it is recommended that Petitioner's Motion for Summary Judgment [Doc. No. 11] be denied. Petitioner is advised of his right to file an objection to this Report and Recommendation with the Clerk of this Court on or before December 6, 2011, in accordance with 28 U.S.C. § 636 and Fed.R.Civ.P. 72. Petitioner is further advised that failure to file a timely objection to this Report and Recommendation waives his right to appellate review of both factual and legal issues contained herein. Moore v. United States, 950 F.2d 656 (10th Cir. 1991). This Report and Recommendation does not dispose of all the issues referred to the undersigned Magistrate Judge in the captioned matter.¹

ENTERED this 16th day of November, 2011.



DOYLE W. ARGO
UNITED STATES MAGISTRATE JUDGE

¹A Motion for Order for Expansion of the Record [Doc. No. 2] was filed by Petitioner contemporaneously with his Petition. A response has now been filed which contains the materials requested by Petitioner, and so that motion is hereby denied.